

37 Am. Jur. 2d Fraud and Deceit § 181

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Fraud and Deceit

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IV. False Representations

G. Representations and Statements as to Particular Matters

3. Value, Cost, and Income of Property

c. Income, Profits, or Rental Productivity

§ 181. As to future income, profits, rents, etc

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

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[False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14](#)

Predictions of future profits are not ordinarily fraudulent where the parties deal at arm's length.¹ A statement concerning future profits, income, or rents is generally a mere prediction or "opinion" and not a statement of fact, and cannot constitute actionable fraud.² Where a statement concerning future profits is justified by past experience and present knowledge, it is not fraudulent,³ and the mere fact that a promise or prediction concerning future rents, profits, or income was not fulfilled does not establish a liability for fraud.⁴

Statements that "business is good" and the "plaintiff will get rich," that "business is excellent and the plaintiff should buy it," that it is "a gold mine," and that a third party is going to buy the business are not factual and do not relate to past or existing fact and can not form the basis of an action in fraud.⁵

On the other hand, false representations of future profits of a business may be so gross as to constitute fraud, especially where the representor is experienced and has superior knowledge of the business and the representee is inexperienced and ignorant

of the facts and prospects respecting such business.⁶ Moreover, misrepresentation as to the profits that may be derived from a business will amount to a misstatement of fact if the person making it has no reasonable grounds on which to base it and has no honest belief in its truth but makes the statement merely for the purpose of misleading and defrauding the other party as where a business sold is being conducted at a loss, and the positive assertion is made by the seller to the purchaser, to induce the purchase, that the latter will receive large profits therefrom.⁷

Where one states that the future profits or income should be a certain sum, but the person actually believes that there will be no profits or income or that they will be substantially less than the person represents, the statement constitutes actionable fraud where the hearer believes the representor and relies on the statement to his or her injury.⁸ The rule that a false promise may be the basis of actionable fraud where at the time it was made the promisor did not intend to perform it⁹ has been applied where the promise was as to rents, profits, or income¹⁰ although in some cases, it has been held that a promise to guarantee a certain future income is not actionable fraud even though the defendant intended not to perform the promise when the defendant made it.¹¹

Where the subject of the sale is a new business so that there are few existing facts concerning its profits or prospects, the future is unusually speculative, and it may be held that representations concerning future profits involve too much guesswork to constitute actionable fraud.¹² Even where the structure or business is well established, but a variety of factors that the owner cannot control seems likely to affect future profits or income, the courts may well hold that a false statement concerning future profits or income does not constitute fraud.¹³

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Footnotes

- 1 Pustelniak v. Vilimas, 352 Ill. 270, 185 N.E. 611 (1933).
- 2 Fischer v. Division West Chinchilla Ranch, 310 F. Supp. 424 (D. Minn. 1970); Stumpf v. Lawrence, 4 Cal. App. 2d 373, 40 P.2d 920 (3d Dist. 1935); Canterbury Court, Inc. v. Rosenberg, 224 Kan. 493, 582 P.2d 261 (1978); Beierle v. Taylor, 164 Mont. 436, 524 P.2d 783 (1974); Guadalupe-Blanco River Authority v. City of San Antonio, 145 Tex. 611, 200 S.W.2d 989 (1947).
- 3 Donnelly v. Baltimore Trust & Guarantee Co., 102 Md. 1, 61 A. 301 (1905).
- 4 Rogers v. Sinclair Refining Co., 49 Ga. App. 72, 174 S.E. 207 (1934).
- 5 Davidowitz v. Dixie Associates, 76 Misc. 2d 554, 351 N.Y.S.2d 34 (Sup 1973), judgment modified on other grounds, 44 A.D.2d 535, 353 N.Y.S.2d 447 (1st Dep't 1974).
Where a vendor's assertion that a campsite operation was a "gold mine" merely constituted "dealer's talk" and where the vendor's statement that gross revenues from the campground in a certain summer season had amounted to \$1,500 was not false, a jury properly returned a verdict for the vendors for overdue installments on the purchase price and against the vendees on a counterclaim for recession of the sale, notwithstanding the vendees only grossed \$400 for the summer following the purchase of the property. *Eaton v. Sontag*, 387 A.2d 33 (Me. 1978).
- 6 Wilke v. Coinway, Inc., 257 Cal. App. 2d 126, 64 Cal. Rptr. 845 (1st Dist. 1967); Hollerman v. F. H. Peavey & Co., 269 Minn. 221, 130 N.W.2d 534 (1964); Bails v. Wheeler, 171 Mont. 524, 559 P.2d 1180 (1977).
- 7 Luchow v. Kansas City Breweries Co., 183 S.W. 1123 (Mo. Ct. App. 1916); Starnes v. Motsinger, 278 S.W. 496 (Tex. Civ. App. El Paso 1925) (recognizing rule).
- 8 Dyke v. Zaiser, 80 Cal. App. 2d 639, 182 P.2d 344 (4th Dist. 1947); Russell v. Industrial Transp. Co., 113 Tex. 441, 251 S.W. 1034, 51 A.L.R. 1 (Comm'n App. 1923), *aff'd*, 113 Tex. 441, 258 S.W. 462, 51 A.L.R. 1 (1924).
- 9 §§ 94 to 100.
- 10 Kentucky Electric Development Co.'s Receiver v. Head, 252 Ky. 656, 68 S.W.2d 1 (1934); Murph v. Foxworth, 93 S.W.2d 817 (Tex. Civ. App. Galveston 1936).
- 11 Hart v. Zaitz, 72 Colo. 315, 211 P. 391 (1922); Shine v. Dodge, 130 Me. 440, 157 A. 318 (1931).

- 12 Coleman v. Dawson, 110 Cal. App. 201, 294 P. 13 (3d Dist. 1930); Detroit & Security Trust Co. v. Echternkamp, 254 Mich. 369, 237 N.W. 52 (1931).
- 13 Moser v. New York Life Ins. Co., 151 F.2d 396 (C.C.A. 9th Cir. 1945); Gibson v. Mendenhall, 1950 OK 276, 203 Okla. 558, 224 P.2d 251 (1950).

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